

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Twenty-One Sound Communications, Inc.	)	File Number EB-05-KC-017
Licensee, KNSX(FM)	)	
Facility ID: 68579	)	NAL/Acct. No. 200532560002
Steelville, MO	)	
Florissant, MO	)	FRN: 0009075656

### MEMORANDUM OPINION AND ORDER

**Adopted:** November 16, 2005

**Released:** November 18, 2005

By the Assistant Chief, Enforcement Bureau:

#### I. INTRODUCTION

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration filed by Twenty-One Sound Communications, Inc. (“Twenty-One Sound”) of the *Forfeiture Order* issued July 27, 2005.<sup>1</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$18,000 on Twenty-One Sound for the willful and repeated violation of Sections 11.35(a), 73.1125(a), and 73.3526(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involved Twenty-One Sound’s failure to maintain Emergency Alert System (“EAS”) equipment in operational readiness condition, failure to maintain a main studio in compliance with the Rules, and failure to maintain a complete public inspection file.

#### II. BACKGROUND

2. On March 1, 2005, an agent with the Kansas City Office of the Federal Communications Commission’s (“Commission”) Enforcement Bureau (“Kansas City Office”) inspected the main studio for Station KNSX(FM), an unmarked guard shack at the entrance to a gated residential area near the station’s transmitter site.<sup>3</sup> The residential community paid the salaries for the guards and made sure that the guard shack was staffed by at least one guard twenty-four hours per day. There was no microphone or transmission or production equipment of any kind in the guard shack. When asked to demonstrate control over the KNSX transmitter, the guard on duty stated that he could not control the transmitter from the guard shack. The guard on duty stated, in the presence of the station owner, that he was not part of the station’s management. The agent observed that the public file in the guard shack did not contain any ownership reports or issues programs lists after December 24, 2003. The file contained a station license that expired on February 1, 2005 and did not include a license renewal application or license renewal.

<sup>1</sup>*Twenty-One Sound*, Forfeiture Order, DA 05-2065 (Enf. Bur. South Central Region July 27, 2005) (“*Forfeiture Order*”).

<sup>2</sup>47 C.F.R. §§ 11.35(a), 73.1125(a), 73.3526(a).

<sup>3</sup>The KNSX(FM) transmitter was located nearby but not within the gated residential community.

3. Also on March 1, 2005, the agent inspected the unattended KNSX transmitter site and observed that the sole EAS unit for the station was installed there. The EAS unit was found in manual operating mode and, as installed, was incapable of automatically retransmitting messages and tests. The station had been receiving EAS activations, but a review of the station logs for the two-month period prior to the inspection confirmed that the station had not retransmitted any activation it had received and had not transmitted several required weekly EAS tests. The owner also admitted that he did not contact the local or state EAS coordinator to determine which stations he had been assigned to monitor, and, as a result, was only monitoring one of the three approved stations.

4. On April 12, 2005, the Kansas City Office issued a *Notice of Apparent Liability for Forfeiture* to Twenty-One Sound in the amount of twenty-five thousand dollars (\$25,000) for the apparent willful and repeated violation of Sections 11.35(a), 73.1125(a) and 73.3526(a) of the Rules.<sup>4</sup> On June 6, 2005, Twenty-One Sound submitted a response to the *NAL* requesting cancellation or reduction of the proposed forfeiture.<sup>5</sup> On July 27, 2005, the Enforcement Bureau released the *Forfeiture Order*. The Enforcement Bureau reduced the forfeiture amount from \$25,000 to \$18,000, because it concluded the station's public file was incomplete, rather than unavailable. The Enforcement Bureau received Twenty-One Sound's petition for reconsideration on August 26, 2005, requesting further reduction or cancellation of the forfeiture.

### III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>8</sup> In examining Twenty-One Sound's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.<sup>9</sup>

6. In its petition for reconsideration, Twenty-One Sound alleges that it did not violate Section 11.35 of the Rules, because its EAS system was not operational for less than 60 days, between January 1, 2005 and the inspection on March 1, 2005. We disagree with Twenty-One Sound's assertions. Section 11.35(b) of the Rules is not a free 60-day pass to operate without functional EAS equipment. Section 11.35(b) of the Rules states that, if equipment becomes defective, a broadcast station may operate "without the defective EAS equipment pending its repair or replacement for 60 days without further FCC authority." That section also requires the broadcast station to log when the defective equipment was removed from service and when it was restored to service. Thus, the 60 days referenced in Section 11.35(b) begin "only after the defective equipment has been removed for repair or replacement."<sup>10</sup>

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<sup>4</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20053256002 (Enf. Bur., Kansas City Office, April 12, 2005) ("*NAL*").

<sup>5</sup>Twenty-One Sound requested an extension of time in which to submit a response to the *NAL*, which was granted by the Kansas City Office.

<sup>6</sup>47 U.S.C. § 503(b).

<sup>7</sup>47 C.F.R. § 1.80.

<sup>8</sup>12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>9</sup>47 U.S.C. § 503(b)(2)(D).

<sup>10</sup>*See A-O Broadcasting Corporation*, Forfeiture Order, 18 FCC Rcd 27069 (FCC 2003). We note that the Commission

Section 11.35(b) of the Rules does not apply in this case, because Twenty-One Sound's EAS equipment was not defective and had not been removed for repair or replacement. In fact, no repairs or replacements were needed; the automatic setting for the EAS unit just needed to be turned on. Therefore, because Twenty-One Sound's EAS unit was not installed so that the monitoring and transmitting functions were available during the times the station and systems were in operation between, at a minimum, January 1, 2005 and March 1, 2005, and because Twenty-One Sound knew or should have known of the problem<sup>11</sup> and took no action to correct the problem, there is no basis for reversal of the ultimate finding in the *Forfeiture Order* that Twenty-One Sound willfully and repeatedly violated Section 11.35(a) of the Rules.

7. In addition, Twenty-One Sound claims that its main studio meets Commission requirements, because it maintained a meaningful management presence. Twenty-One Sound asserts that the guard on duty during the inspection was the station manager. The station owner claims, under penalty of perjury, that the guard was "afraid to admit that he was compensated for his time working with KNSX for fear that he would be turned over to the IRS for accepting compensation." This explanation does not seem compelling, however, because the guard admitted to the agent that he was paid on occasion by Twenty-One Sound. Nor does it explain why the station owner failed to correct a contemporaneous statement made by the guard during the March 1, 2005 inspection. The guard stated, in the presence of the station owner, that he was not part of station management. Twenty-One Sound also states that the station owner and his assistant were part of the physical presence for the station, because they could arrive at the station within minutes of being notified. Although station management is not required to be continuously present, a meaningful managerial presence requires that "management personnel report to work at the main studio on a daily basis, spend a substantial amount of time there and, ... use the studio as a "home base."<sup>12</sup> Twenty-One Sound did not allege that the station owner and his assistant reported to the main studio on a daily basis. Twenty-One Sound merely stated that these individuals could arrive at the main studio within a short period of time. Indeed, given that Station KNSX's main studio was a guard shack of approximately 128 square feet and that there was no evidence of any property belonging to the station in the shack other than the public file, it would be difficult to believe that these individuals spent a substantial amount of time there. Accordingly, there is no basis for reversal of the ultimate finding in the *Forfeiture Order* that Twenty-One Sound willfully and repeatedly failed to maintain full-time managerial personnel at its main studio in violation of Section 73.1125(a) of the Rules.

8. Regarding its ability to maintain continuous program transmission capability, Twenty-One Sound alleges the guard on duty knew how to control the station's transmitter but was flustered by the inspection. Regardless of whether the guard on duty was flustered or otherwise incapacitated, when asked to demonstrate control of the transmitter, the only guard on duty could not do so. Therefore, the station failed to maintain continuous program transmission capability from its main studio. Twenty-One Sound also states that although there was only one telephone line running into the main studio, the guards had cellular telephones and could place calls from a nearby building. Thus, Twenty-One Sound asserts even if a guard used the single telephone line in the guard shack, she or he would still be able to control the transmitter via a cellular phone or phones in the other building. We note that the existence of these additional phones was not mentioned during the inspection or in Twenty-One Sound's response to the *NAL*. We reiterate that a station must equip its main studio with facilities that can maintain continuous

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released the *A-O Broadcasting Corporation Forfeiture Order* on December 29, 2003, more than one year prior to the investigation of station KNSX(FM) by the Kansas City Office.

<sup>11</sup>Twenty-One Sound should have known that its EAS unit was not set in automatic mode when its January monthly test failed to automatically retransmit. Moreover, Twenty-One Sound would have discovered and, therefore, should have known that its EAS unit was not operational had it conducted the required weekly tests in January or February or the required February monthly test.

<sup>12</sup>*Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6800, 6802 (1992).

program transmission capability. Twenty-One Sound's main studio contained no production or transmission equipment and was equipped only with a single telephone. Twenty-One Sound failed to provide any evidence that the phone line running to the main studio, the cellular telephones allegedly used by the guards, or the phones in the nearby building were maintained by the station or that the station had negotiated the exclusive use of these phone lines. Accordingly, there is no basis for reversal of the ultimate finding in the *Forfeiture Order* that Twenty-One Sound willfully and repeatedly failed to equip its main studio with production and transmission facilities that meet applicable standards and failed to maintain continuous program transmission capability in violation of Section 73.1125(a) of the Rules.<sup>13</sup>

9. Twenty-One Sound also claims that an agent inspected the station on or about May 7, 1996 during a disaster inspection and found no violations at the main studio. Because the main studio has remained unchanged since then, Twenty-One Sound claims that it thought its current main studio configuration was compliant with the Rules. According to the Commission's records, on June 10 and 11, 1997, an agent conducted a disaster inspection of Station KNSX(FM)'s tower, which had been struck by an airplane.<sup>14</sup> The 1997 disaster inspection, however, only covered Station KNSX(FM)'s tower and did not involve a full inspection of the station's main studio. Therefore, the agent could not have determined whether there were any violations at the station's main studio. Moreover, statements made by the station owner during the inspection directly contradict Twenty-One Sound's claims. The station owner admitted that during the summer of 2004 Station KNSX(FM) failed an alternative broadcast inspection ("ABIP") conducted by the Missouri Broadcast Association because of problems with its main studio. Thus, although not required to find a violation willful, we conclude that Twenty-One Sound had reason to believe its main studio was not in compliance with the Rules.

10. Finally, Twenty-One Sound requests that the Commission eliminate the \$3,000 forfeiture for the station's public file violation, because the station's ownership report and license renewal application<sup>15</sup> were possibly removed by an individual who reviewed the station's public file and because the station's issues programs lists were only required to be kept for a few days after the March 1, 2005 inspection. Twenty-One Sound's arguments, however, are not persuasive. Regardless of why or for how long items were missing, the fact remains that three items were missing from the station's public file when the agent conducted his inspection: ownership reports, license renewal, and issues programs lists. Twenty-One Sound is required to maintain a public file and is responsible for ensuring that it is complete. Accordingly, there is no basis for reversal of the ultimate finding in the *Forfeiture Order* that Twenty-One Sound violated Section 73.3526(a) of the Rules by failing to maintain a complete public inspection file.

## V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>16</sup> and Section 1.106 of the Commission's Rules,<sup>17</sup> Twenty-One Sound Communications, Inc.'s petition for reconsideration of the July 27, 2005 *Forfeiture Order* **IS** hereby **DENIED**.

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<sup>13</sup>We note that it is irrelevant whether Station KNSX maintained production and transmission equipment at its transmitter site, because the transmitter site was not the station's main studio.

<sup>14</sup>The Commission has no record of a disaster inspection conducted on or around May 7, 1996.

<sup>15</sup>We note that the *Forfeiture Order* found that the station was missing ownership reports, issues programs lists and the *license renewal*, not the license renewal application. Twenty-One Sound did not address whether an individual also removed the station's license renewal from the public file.

<sup>16</sup>47 U.S.C. § 405.

<sup>17</sup>47 C.F.R. § 1.106.

12. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>18</sup> Twenty-One Sound Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for willful and repeated violation of Sections 11.35(a), 73.1125(a), and 73.3526(a) of the Rules.

13. Payment of the \$18,000 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>19</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the "Federal Communications Commission." The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>20</sup>

14. **IT IS FURTHER ORDERED** that this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Twenty-One Sound Communications, Inc. at its address of record and its counsel, Lee J. Peltzman, Shainis & Peltzman, Chartered, 1850 M Street NW, Suite 240, Washington, DC 20036.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>18</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>19</sup> 47 U.S.C. § 504(a).

<sup>20</sup> See 47 C.F.R. § 1.1914.